



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**NTT America, Inc.  
DEQ Registration No. 72376**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1307.D, 10.1-1316, and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and NTT America, Inc., for the purpose of resolving certain alleged violations of the air permit and regulations as specified in SECTION C of this Order.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "AST" means an above ground storage tank.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.
5. "EDG" means an emergency diesel generator.
6. "Facility" means NTT America, Inc., located at 22451 Shaw Road, Sterling VA 20166 (Loudoun County).
7. "NSR" means New Source Review.
8. "NOx" means Nitrogen Oxides.
9. "NOV" means a Notice of Violation.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Order" means this document, also known as a Consent Order.
12. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
13. "VAC" means Virginia Administrative Code.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VEE" means a Visible Emissions Evaluation.
16. "VOC" means Volatile Organic Compounds.

#### **SECTION C: Findings of Fact**

1. NTT America, Inc. (Facility Registration No. 732376) owns and operates a data center facility at 22451 Shaw Road, Sterling VA. The facility was formerly named Verio. The facility currently operates 5 emergency diesel generator (EDG) units each nominally rated at 2,000 kilowatt (kW) electrical output – manufactured by Caterpillar. All five diesel engines are provided with fuel from four above ground storage tanks (ASTs) with a nominal capacity of 12,500 gallons. The generators are permitted under a Stationary Source Permit to Construct and Operate (NSR Permit) approved by DEQ on December 20, 2004.
2. DEQ conducted an inspection of the facility on May 30, 2007. The inspection of the facility gave rise to a number of deficiencies that were subsequently addressed in the NOV issued on June 19, 2007.

3. DEQ issued a NOV to NTT America, Inc. on June 19, 2007, addressing the following alleged violations.
  - a. After file review of the facility by DEQ no record of an initial performance test was found and no performance testing results could be produced by NTT America, Inc. The failure of conducting compliance tests violates the terms of Permit Condition 8 of the facility's December 20, 2004 NSR permit that requires, "Performance tests for two of the five engines shall be conducted for nitrogen oxides (NOx) from the engine to determine compliance with the emission limit contained in Condition 5A." Such compliance tests are required to be at minimum, completed within 60 days of the date of the operating permit, unless approved in writing by the NRO.
  - b. The facility failed to file and could not produce a record of a visible emissions evaluation (VEE) as required by Permit Condition 9 of the facility's December 20, 2004 NSR permit. As set forth in the Permit in accordance with 40 CFR Part 60, Appendix A, Method 9, VEE tests shall be conducted on each exhaust stack "consisting of three one-hour runs, with each run consisting of ten six-minute averages (twenty-four fifteen second reading)."
  - c. During the on-site evaluation and inspection, no fuel certifications could be produced by the facility as required under Permit Condition 3 of the facility's December 20, 2004 NSR permit. The facility shall use #2 distillate oil approved for use in the five generators. Additionally the distillate oil must meet the ASTM D396 specifications requiring, "sulfur content per shipment of no greater than 0.05%."
  - d. The facility failed to provide the additional certification for the fuel as required under Permit Condition 4 of the facility's December 20, 2004 NSR permit which required a fuel supplier certification be provided. The certification shall include: name of the fuel supplier; date of receipt of the oil to the operator; delivery volume of the shipment; statement of assurance that the distillate oil is in compliance D396 specification for #2 fuel oil, as set forth, by the American Society for Testing and Materials, the sulfur content of the distillate oil; and the methodology of determining the specific sulfur content.
  - e. NTT America, Inc.'s failure to maintain the record of emissions data and operating parameters violates Permit Condition 11 of the facility's December 20, 2004 NSR permit. The format and content of these records shall be determined by the Air Compliance Manager of the NRO and "shall include, but are not limited to ... Fuel specification certifications to demonstrate the use of fuels is in compliance with condition 3 of this permit."

4. On September 28, 2007, NTT America, Inc. met with DEQ staff at NRO to discuss the violations alleged in the NOV dated June 19, 2007, and the steps required for the facility to operate in compliance. NTT America, Inc.'s Representative Mark Malin agreed to get the fuel certified and have a contractor create an initial stack test/VEE protocol to be submitted to DEQ within 30 days prior to stack testing.
5. On October 10, 2007, a fuel certification test was conducted by Penniman & Browne, Inc. The results of the test for the four ASTs were presented to NTT America, Inc. and to DEQ on October 11, 2007. The contractor found that all four tanks had sulfur content of 0.1614-0.1664 %, more than three times over the limit of 0.05% as required under Permit Condition 3 of the facility's December 20, 2004 NSR permit.
6. On October 16, 2007, DEQ received the independent fuel testing results from the Department of Consolidated Laboratory Services (DCLS) for same testing event occurring on October 10, 2007. DCLS testing results determined that all four of NTT America, Inc.'s AST contained diesel fuel with a sulfur content of 0.14% by weight. These results demonstrate that the fuel used onsite is almost three times over the limit of 0.05% as required under Permit Condition 3 of the facility's December 20, 2004 NSR permit.
7. In response to the exceedance of the sulfur limits of the facility's December 20, 2004 NSR permit a NOV was issued to NTT America, Inc. by DEQ on October 25, 2007.
8. On December 15, 2007, a third party contracting firm conducted initial stack performance tests for nitrogen oxides (NO<sub>x</sub>) and conducted Visible Emission Evaluations (VEE) on each of the exhaust stacks.
9. On February 7, 2008, NTT America, Inc. met with DEQ staff at NRO to discuss the Consent Order and the steps the Facility had taken to come into compliance since the September 28, 2007 meeting. As of February 15, 2008, the Facility is in compliance with the requirements of the Permit and the terms set forth under the Appendix A of the first draft of the Consent Order presented to NTT America, Inc. prior to the February 7, 2008.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§10.1-1309 and 10.1-1316, and upon consideration of Va. Code § 10.1-1186.2, the Board orders NTT America, Inc., and NTT America, Inc. agrees, to perform the actions described below in Appendix A of this Order. In addition, the Board orders NTT America, Inc., and NTT America, Inc. voluntarily agrees, to a civil charge in the amount of \$70,000.00 (seventy thousand dollars) in settlement of the violations cited in this Order, to be paid as follows:

1. The NTT America, Inc. shall pay \$17,500 within 30 days of the effective date of this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The payment shall include NTT America, Inc.'s Federal ID Number and shall identify that payment is being made as a result of this Order.

2. NTT America, Inc. shall satisfy \$52,500.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
3. The net project cost of the SEP to NTT America, Inc. shall not be less than the amount set forth in paragraph D.2. If it is, NTT America, Inc. shall pay the remaining amount in accordance with paragraph D.1 of this Order, unless otherwise agreed to by this Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
4. By signing this Order, NTT America, Inc. certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved SEP.
5. NTT America, Inc. acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks or otherwise by NTT America, Inc. to a third party, shall not relieve NTT America, Inc. of its responsibility to complete the SEP as described in this Order.
6. In the event that it publicizes the SEP or the SEP results, NTT America, Inc. shall state in a prominent manner that the project is part of a settlement of an enforcement action.
7. The Department has the sole discretion to:
  - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
  - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that NTT America, Inc. has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify NTT America, Inc. in writing. Within 30 days of being notified, NTT America, Inc. shall pay the amount specified in D.2., above, as provided in paragraph D.1., above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of NTT America, Inc., for good cause shown by NTT America, Inc., or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violations issued June 19, 2007, and October 25, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, NTT America, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. NTT America, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NTT America, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by NTT America, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NTT America, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. NTT America, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NTT America, Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert, will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NTT America, Inc. Notwithstanding the foregoing, NTT America, Inc. agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall terminate upon receipt by DEQ of the funds specified in Section D herein. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NTT America, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, NTT America, Inc. voluntarily agrees to the issuance of this Order.

13. The undersigned representative of NTT America, Inc. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NTT America, Inc. to this document. Any documents to be submitted pursuant to this order shall also be submitted by a responsible official of NTT America, Inc.

And it is so ORDERED this day of May 9, 2008.

Thomas A. Faha  
Thomas A. Faha, Northern Regional Director  
Department of Environmental Quality

NTT America, Inc. voluntarily agrees to the issuance of this Order.

By: Tetsuro Yamaguchi  
Date: 5/8/2008

Commonwealth of Virginia

City/County of New York, Kings

The foregoing document was signed and acknowledged before me this day of

May 8, 2008, by Tetsuro Yamaguchi, who is  
(name)

President/CEO of NTT America, Inc., on behalf of the Organization.  
(title)

Tishawah Hart  
Notary Public

My commission expires: June 13, 2009



## Appendix A

NTT America, Inc. shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by NTT America, Inc. is to first install a dropped ceiling return air plenum and sheet metal return air ducts to increase the efficiency of the cooling system in the facility's Web Hosting Room for an estimated energy savings of 181,440 kWh per month. The second SEP project is to install a compactor/baler at the facility to enable the recycling of the cardboard produced at the facility at the average rate of 300 lbs/day.
2. The SEP shall be completed in a timely manner with the installation of the compactor project being completed within 90 days of the execution of this Order. The cooling system upgrade shall be installed within 90 days of the execution of this Order and NTT America, Inc. shall notify DEQ upon completion of each phase of the project as outlined in paragraph 3 below.
3. NTT America, Inc. shall submit progress reports on the SEP on a monthly basis on the 10<sup>th</sup> day of the month.
4. NTT America, Inc. shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. NTT America, Inc. shall submit the final report and certification to the Department within 30 days of completion of the SEP.
5. If the SEP has not or can not be completed as described in the Order, NTT America, Inc. shall notify DEQ in writing no later than 90 days from the execution of this Order. Such notification shall include:
  - a. An alternate SEP proposal, or
  - b. Payment of the amount specified in paragraph D.2 as specified in paragraph D.1.
6. NTT America, Inc. hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. NTT America, Inc. shall submit to the Department written notification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of completion of the SEP. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from NTT America, Inc.'s Chief Financial Officer concerning the

projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of this Order, shall be sent to:

Virginia Department of Environmental Quality  
Attn: Enforcement Staff  
13901 Crown Court  
Woodbridge, VA 22193